



Federal Communications Commission  
Washington, D.C. 20554

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October 28, 2004

Richard Collier, Chief Counsel  
Legal Division  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

04-00398

Re Petition by the Federal Communications Commission, Pursuant to 47 C F R § 54.207(d), for Tennessee Regulatory Authority Agreement in Redefining the Service Areas of Citizens Telecommunications Company of Tennessee d/b/a Frontier Communications, Bledsoe Telephone Cooperative, Inc., Twin Lakes Telephone Cooperative Corp., and North Central Telephone Cooperative, Inc

Dear Mr. Collier.

Attached is an order released by the Federal Communications Commission's Wireline Competition Bureau (Bureau) on October 22, 2004. In this Order, the Commission grants in part and denies in part, the petition of Advantage Cellular Systems, Inc. (Advantage Cellular) to be designated as an eligible telecommunications carrier (ETC) throughout its licensed service area in the state of Tennessee pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).

Please note that pursuant to section 214(e)(5) of the Act, this Order also proposes to redefine the service areas for four of the rural telephone companies for which Advantage Cellular has been granted ETC status -- Bledsoe Telephone Cooperative, Inc., North Central Telephone Cooperative, Inc., Twin Lakes Telephone Cooperative Corp., and Citizens Telecommunications Company of Tennessee d/b/a Frontier Communications. Specifically, consistent with prior rural service area redefinitions, the Commission proposes to redefine each wire center in these study areas as a separate service area. As stated in the Order, the Commission's decision to redefine the service areas of these telephone companies is subject to the review and final agreement of the Tennessee Regulatory Authority (TRA) in accordance with applicable TRA requirements. Accordingly, as part of this Order, the Bureau submits its redefinition proposal to the TRA and requests that it examine such proposal based on its unique familiarity with the rural areas in question.

Thank you for your attention to this matter and please do not hesitate to contact me at (202) 418-0725 if you have any questions.

Sincerely,

Thomas Buckley  
Attorney-Advisor  
Telecommunications Access Policy Division  
Wireline Competition Bureau

Attachment

Cc Narda Jones, Telecommunications Access Policy Division, FCC (w/o attachment)  
Anita Cheng, Telecommunications Access Policy Division, FCC (w/o attachment)  
Rebecca Murphy, Bennet & Benet, PLLC (w/o attachment)

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	
Universal Service	)	CC Docket No 96-45
	)	
Advantage Cellular Systems, Inc	)	
	)	
Petition for Designation as an	)	
Eligible Telecommunications Carrier in the state	)	
of Tennessee	)	
	)	
	)	
	)	

**ORDER**

**Adopted: October 22, 2004**

**Released: October 22, 2004**

By the Chief, Wireline Competition Bureau

**I. INTRODUCTION**

1 In this Order, we grant in part and deny in part the petition of Advantage Cellular Systems, Inc (Advantage Cellular) to be designated as an eligible telecommunications carrier (ETC) in portions of its licensed service area in the state of Tennessee, pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act)<sup>1</sup> In so doing, we conclude that Advantage Cellular, a commercial mobile radio service (CMRS) carrier, has satisfied the statutory eligibility requirements of section 214(e)(1) to be designated as an ETC<sup>2</sup> As explained below, however, with regard to the study area of United Telephone Company (United Telephone), the Cookeville South and Baxter wire centers in the study area of Citizens Telecommunications Company of Tennessee d/b/a Frontier Communications (Frontier), and the McMinnville and Cookeville wire centers in the study area of Twin Lakes Telephone

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<sup>1</sup>See Advantage Cellular Systems, Inc , Application for Designation as an Eligible Telecommunications Carrier in the State of Tennessee, filed May 9, 2003 (Advantage Cellular Petition), Advantage Cellular Systems, Inc , Supplement to Petition of Advantage Cellular Systems, Inc to be Designated as an Eligible Telecommunications Carrier, filed June 17, 2003 (Advantage Cellular June 17, 2003 Supplement), Advantage Cellular Systems, Inc , Ex Parte Comments of Advantage Cellular Systems, Inc , filed July 18, 2003 (Advantage Cellular July 18, 2003 Ex Parte), Advantage Cellular Systems, Inc , Supplement to Petition of Advantage Cellular Systems, Inc to be Designated as an Eligible Telecommunications Carrier, filed Feb 17, 2004 (Advantage Cellular February 17, 2004 Supplement), Advantage Cellular Systems, Inc , Second Supplement to Petition of Advantage Cellular Systems, Inc to be Designated as an Eligible Telecommunications Carrier, filed May 18, 2004 (Advantage Cellular May 18, 2004 Supplement), Letter from Rebecca Murphy, Counsel to Advantage Cellular, to Belinda Nixon, FCC, dated June 18, 2004 (Advantage June 18 Supplement), Advantage Cellular Systems, Inc , Request that Materials and Information Submitted to the FCC be Withheld from Public Inspection, filed June 18, 2004 (Advantage Cellular Confidentiality Request), Letter from Rebecca Murphy, Counsel to Advantage Cellular, to Marlene R. Dortch, FCC, dated October 14, 2004 (Advantage October 14 Supplement), Letter from Rebecca Murphy, Counsel to Advantage Cellular, to Marlene R. Dortch, FCC, dated October 15, 2004 (Advantage Cellular October 15 Supplement)

<sup>2</sup>47 U.S.C. § 214(e)(1)

Cooperative Corp (Twin Lakes), we do not find that ETC designation would be in the public interest

2 We also propose to redefine the service areas of Frontier, Twin Lakes, Bledsoe Telephone Cooperative, Inc (Bledsoe) and North Central Telephone Cooperative, Inc (North Central), subject to agreement by the Tennessee Regulatory Authority (TRA) in accordance with applicable TRA requirements.<sup>3</sup> We find that the TRA's first-hand knowledge of the rural areas in question uniquely qualifies it to examine the redefinition proposal and determine whether it should be approved.<sup>4</sup> If the TRA does not agree to the proposal to redefine the affected service areas, we will reexamine our decision with regard to redefining these service areas

## II. BACKGROUND

### A. The Act

3 Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."<sup>5</sup> Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.<sup>6</sup>

4 Section 214(e)(2) of the Act provides state commissions with the primary responsibility for performing ETC designations.<sup>7</sup> Section 214(e)(6), however, directs the Commission, upon request, to designate as an ETC "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."<sup>8</sup> Under section 214(e)(6), the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of section 214(e)(1).<sup>9</sup> Before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.<sup>10</sup> The Wireline Competition Bureau (Bureau)

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<sup>3</sup>47 U.S.C. § 214(e)(5)

<sup>4</sup>If the TRA does not agree to the proposal to redefine the affected rural service areas, we will reexamine our decision with regard to redefining these service areas

<sup>5</sup>47 U.S.C. § 254(e)

<sup>6</sup>47 U.S.C. § 214(e)(1)

<sup>7</sup>47 U.S.C. § 214(e)(2). See also *Federal-State Joint Board on Universal Service, Promoting Deployment and Subscribership in Unserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 15 FCC Rcd 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*)

<sup>8</sup>47 U.S.C. § 214(e)(6). See, e.g., *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 1563 (2004) (*Virginia Cellular Order*), *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 6422 (2004) (*Highland Cellular Order*)

<sup>9</sup>47 U.S.C. § 214(e)(6)

<sup>10</sup>*Id.*

has delegated authority to perform ETC designations <sup>11</sup>

## B. Commission Requirements for ETC Designation

5 An ETC petition must contain the following (1) a certification and brief statement of supporting facts demonstrating that the petitioner is not subject to the jurisdiction of a state commission, (2) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c), (3) a certification that the petitioner offers or intends to offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services," (4) a description of how the petitioner "advertise[s] the availability of [supported] services and the charges therefor using media of general distribution," and (5) if the petitioner meets the definition of a "rural telephone company" pursuant to section 3(37) of the Act, the petitioner must identify its study area, or, if the petitioner is not a rural telephone company, it must include a detailed description of the geographic service area for which it requests an ETC designation from the Commission <sup>12</sup>

6 On June 30, 2000, the Commission released the *Twelfth Report and Order* which, among other things, set forth how a carrier seeking ETC designation from the Commission must demonstrate that the state commission lacks jurisdiction to perform the ETC designation <sup>13</sup> Carriers seeking designation as an ETC for service provided on non-tribal lands must provide the Commission with an "affirmative statement" from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission's jurisdiction <sup>14</sup> The requirement to provide an "affirmative statement" ensures that the state commission has had "a specific opportunity to address and resolve issues involving a state commission's authority under state law to regulate certain carriers or classes of carriers" <sup>15</sup>

7 On January 22, 2004, the Commission released the *Virginia Cellular Order*, which granted in part and denied in part the petition of Virginia Cellular, LLC (Virginia Cellular) to be designated as an ETC throughout its licensed service area in the Commonwealth of Virginia <sup>16</sup> In that Order, the Commission utilized a new public interest analysis for ETC designations and imposed ongoing conditions and reporting requirements on Virginia Cellular <sup>17</sup> The Commission further stated that the framework enunciated in the *Virginia Cellular Order* would apply to all ETC designations for rural areas pending further action by the Commission <sup>18</sup> Following the framework established in the *Virginia Cellular Order*, on April 12, 2004, the Commission released the *Highland Cellular Order*, which granted

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<sup>11</sup>See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, CC Docket No. 96-45, 12 FCC Rcd 22947, 22948 (1997) (Section 214(e)(6) Public Notice). The Wireline Competition Bureau was previously named the Common Carrier Bureau.

<sup>12</sup>See *Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22948-49 (1997), 47 U.S.C. § 3(37). See also *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168 (2000) (*Declaratory Ruling*), recon pending.

<sup>13</sup>See *Twelfth Report and Order*, 15 FCC Rcd at 12255-65, paras. 93-114.

<sup>14</sup>*Twelfth Report and Order*, 15 FCC Rcd at 12255, para. 93.

<sup>15</sup>*Id.*

<sup>16</sup>See *Virginia Cellular Order*, 19 FCC Rcd at 1564, para. 1.

<sup>17</sup>See *Virginia Cellular Order*, 19 FCC Rcd at 1565, 1575-76, 1584-85, paras. 4, 27, 28, 46.

<sup>18</sup>See *Virginia Cellular Order*, 19 FCC Rcd at 1565, para. 4.

in part and denied in part the petition of Highland Cellular, Inc. to be designated as an ETC in portions of its licensed service area in the Commonwealth of Virginia.<sup>19</sup> In the *Highland Cellular Order*, the Commission concluded, among other things, that a telephone company in a rural study area may not be designated as a competitive ETC below the wire center level.<sup>20</sup>

### C. Advantage Cellular Petition

8 Pursuant to section 214(e)(6), Advantage Cellular filed with this Commission a petition and amendments thereto, seeking designation as an ETC in study areas served by both rural and non-rural incumbent local exchange carriers in the state of Tennessee.<sup>21</sup> The Bureau released a public notice seeking comment on the petition.<sup>22</sup> In light of the new ETC designation framework established in the *Virginia Cellular Order*, Advantage Cellular filed a supplement to its ETC petition on February 17, 2004.<sup>23</sup> On April 2, 2004, the Bureau released a public notice seeking comment concerning all supplemented ETC petitions, including the petition filed by Advantage Cellular.<sup>24</sup> Throughout this process, several parties filed comments and oppositions.<sup>25</sup>

9 Advantage Cellular also requests that the Commission redefine the service areas of five incumbent rural telephone companies, Frontier, Twin Lakes, Bledsoe, North Central, and United Telephone because it is not able to serve the entire study area of each of these companies.<sup>26</sup> Advantage Cellular states that as a wireless carrier, it is restricted to only providing facilities-based service in those areas where it is licensed by the Commission.<sup>27</sup> It adds that it is not picking and choosing the "lowest cost exchanges" of the affected rural telephone companies, but instead is basing its requested ETC area solely on the wire centers and/or study areas that its licensed service area covers and proposes to serve the entirety of those areas.<sup>28</sup> Advantage Cellular further contends that the proposed redefinition of the rural telephone companies' service areas is consistent with the recommendations regarding rural telephone

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<sup>19</sup>See *Highland Cellular Order*, 19 FCC Rcd at 6422, para. 1.

<sup>20</sup>See *Highland Cellular Order*, 19 FCC Rcd at 6438, para. 33.

<sup>21</sup>See *supra* note 1.

<sup>22</sup>See *Wireline Competition Bureau Seeks Comment on Advantage Cellular Systems, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Tennessee*, Public Notice, CC Docket No. 96-45, 18 FCC Rcd 11,389 (2003).

<sup>23</sup>See Advantage Cellular February 17, 2004 Supplement.

<sup>24</sup>See *Parties are Invited to Comment on Supplemented Petitions for Eligible Telecommunications Carrier Designations*, Public Notice, CC Docket 96-45, 19 FCC Rcd 6405 (2004).

<sup>25</sup>See Comments of Citizens Telecommunications Company of the Volunteer State, filed June 30, 2003, Opposition of Verizon, filed June 30, 2003 (Verizon June 30, 2003 Opposition), Comments of the Cellular Telecommunications and Internet Association, filed June 30, 2003, Reply Comments of Advantage Cellular Systems, Inc., filed July 7, 2003, Joint Reply of Tennessee Independent Telephone Companies, filed July 7, 2003 (Tennessee Independent Telephone Companies Comments), Opposition of Verizon, filed May 7, 2004 (Verizon May 7, 2004 Opposition), Comments of Frontier Communications Companies, filed May 7, 2004 (Frontier May 7, 2004 Comments), Reply Comments of Advantage Cellular Systems, Inc., filed May 14, 2004.

<sup>26</sup>See Advantage Cellular February 17, 2004 Supplement at 11.

<sup>27</sup>See *e.g.*, Advantage Cellular February 17, 2004 Supplement at 11.

<sup>28</sup>See Advantage Cellular February 17, 2004 Supplement at 13, Advantage Cellular May 18, 2004 Supplement at 5.

company service areas, as set forth by the Federal-State Joint Board in its *Recommended Decision* <sup>29</sup>

### III. DISCUSSION

10 After careful review of the record before us, we find that Advantage Cellular has met all the requirements set forth in section 214(e)(1) and (e)(6) to be designated as an ETC for the portions of its licensed service area described herein. We therefore designate Advantage Cellular as an ETC for the parts of its licensed service area in the state of Tennessee as set forth below. In areas where Advantage Cellular's proposed service areas do not cover the entire study area of a rural telephone company, Advantage Cellular's ETC designation shall be subject to the TRA's agreement with our new definition for the rural telephone company service areas. In all other areas, as described herein, Advantage Cellular's ETC designation is effective immediately. As explained below, however, we do not designate Advantage Cellular as an ETC in the study area of United Telephone and certain wire centers in the study areas of Frontier and Twin Lakes.

#### A. Commission Authority to Perform the ETC Designation

11 Advantage Cellular has demonstrated that the TRA lacks the jurisdiction to perform the requested ETC designation and the Commission has authority to consider Advantage Cellular's petition under section 214(e)(6) of the Act. Advantage Cellular submitted as an "affirmative statement" an order issued by the TRA addressing an application filed with it by Advantage Cellular seeking designation as an ETC <sup>30</sup>. In addition to dismissing Advantage Cellular's ETC petition due to lack of jurisdiction, the TRA stated its order shall serve as the affirmative statement required by the Commission indicating the TRA lacks jurisdiction to perform Advantage Cellular's ETC designation <sup>31</sup>. Based on this statement, we find the TRA lacks jurisdiction to designate Advantage Cellular as an ETC and this Commission has authority to perform the requested ETC designation in the state of Tennessee pursuant to section 214(e)(6) <sup>32</sup>.

#### B. Offering and Advertising the Supported Services

12 Offering the Services Designated for Support. Advantage Cellular has demonstrated through the required certifications and related filings that it now offers, or will offer upon designation as an ETC, the services supported by the federal universal service mechanism. As noted in its petition, Advantage Cellular is authorized to provide cellular radiotelephone service on frequency block B in rural Tennessee (Cannon, Tennessee RSA 2, CMA644) <sup>33</sup>. Advantage Cellular certifies that it now provides or will provide throughout its designated service area the services and functionalities enumerated in section 54.101(a) of the Commission's rules <sup>34</sup>. Advantage Cellular has also certified that, in compliance with the Commission's Lifeline rules, it will make available and advertise Lifeline service to qualifying low-

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<sup>29</sup> Advantage Cellular February 17, 2004 Supplement at 9-15.

<sup>30</sup> See Advantage Cellular Petition at 6-8, Exhibits C and D.

<sup>31</sup> See *id*.

<sup>32</sup> 47 U.S.C. § 214(e)(6).

<sup>33</sup> Advantage Cellular Petition at 5, Exhibit E, Declaration of Wayne Gassaway, General Manager and Authorized Representative, Advantage Cellular (executed April 21, 2003) (Advantage Cellular Declaration).

<sup>34</sup> See *id*.

income consumers<sup>35</sup> Advantage Cellular has also made commitments that closely track those set forth in the *Virginia Cellular Order* and the *Highland Cellular Order*, including (1) annual reporting of progress towards buildout plans, unfulfilled service requests, and complaints per 1,000 handsets, (2) specific commitments to provide service to requesting customers in the area for which it is designated, including those areas outside existing network coverage, and (3) specific commitments to construct new cell sites and/or lease space on existing cell towers in areas outside its network coverage<sup>36</sup>

13 We reject the claim of Frontier that Advantage Cellular has not satisfied the framework in the *Virginia Cellular Order* and section 214 of the Act because it has not committed to provide service throughout the entire study areas and/or wire centers for which it seeks designation as an ETC<sup>37</sup> As discussed above and consistent with the framework established in the *Virginia Cellular Order*, Advantage Cellular has made detailed commitments to provide service to requesting customers throughout the service areas in which it seeks designation<sup>38</sup> In addition, where Advantage Cellular's licensed service area does not fully cover the rural study areas and/or wire centers in which we designate it as an ETC, Advantage Cellular has committed to offer service to customers in the entirety of these wire centers and/or study areas through a combination of its own facilities and roaming or resale agreements with other carriers<sup>39</sup> Frontier further contends that Advantage Cellular should be required to commit to providing supported services to customers in its designated service area within a specific time frame<sup>40</sup> We disagree As Advantage Cellular notes in its reply comments, its commitments to provide service to requesting customers in a reasonable time frame and build-out its network to improve its wireless coverage closely track the commitments made in the *Virginia Cellular Order*<sup>41</sup> Moreover, as part of its ETC designation, Advantage has committed to annually report information detailing the number of unfulfilled requests for service from potential customers and its progress towards meeting its build-out

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<sup>35</sup> See Advantage Cellular Petition at 5 & Exhibit E, Advantage Cellular February 17, 2004 at 4, 47 C.F.R. § 54.405 We note that ETCs must comply with state requirements in states that have Lifeline programs See *Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 03-109, 19 FCC Rcd 8302, 8320 at para. 29 (2003)

<sup>36</sup> Advantage Cellular has provided detailed information on how it will use universal service support to expand its CMRS coverage throughout Tennessee See Advantage Cellular February 17, 2004 Supplement at 6-7, Advantage Cellular May 18, 2004 Supplement at 2-3 Specifically, Advantage Cellular provides the location by wire center of cell towers on which it plans to lease space, the timeframe for commencement of its cell tower leasing, the populations served by new cell sites, and the cost of build-out plans See *id.* See also Advantage Cellular June 18, 2004 Supplement In 2004, Advantage Cellular will use universal service support to lease space on cell towers in the Smithville wire center which is estimated to serve 150 people, the Centertown wire center which is estimated to serve 500 people, and the Beech Grove wire center which is estimated to serve 300 people See *id.*, Advantage October 14 Supplement In addition, Advantage Cellular plans to build and/or lease space at 8 more sites to improve its coverage See Advantage Cellular Second Supplement at 3 Pursuant to section 0.459 of the Commission's rules, Advantage Cellular has requested that cost data related to its leasing agreements be treated as confidential and withheld from public inspection See Advantage June 18 Supplement, Advantage Cellular Confidentiality Request We recognize that Advantage Cellular's plans may change over time depending on consumer demand, fluctuation in universal service support, and related factors See, e.g., *Virginia Cellular Order*, 19 FCC Rcd at 1571, para. 16

<sup>37</sup> See Frontier May 7, 2004 Comments at 5-6

<sup>38</sup> See *Virginia Cellular Order*, 19 FCC Rcd at 1570, para. 15, Advantage Cellular Feb. 17, 2004 Supplement at 6-7, Advantage Cellular May 18, 2004 Supplement at 2-3, Advantage Cellular May 14, 2004 Reply Comments at 3-4

<sup>39</sup> See Advantage Cellular May 18, 2004 Supplement at 5-9, See Advantage Cellular February 17, 2004 Supplement at 9, 13-14

<sup>40</sup> See Frontier May 7, 2004 Comments at 4, 6

<sup>41</sup> See Advantage Reply Comments at 4-6



plans<sup>42</sup> We note that if Advantage Cellular fails to fulfill any of the requirements of section 214 of the Act, the Commission's rules, or terms of this Order, after it begins receiving universal service support, the Commission has authority to revoke its ETC designation<sup>43</sup>

14 Offering the Supported Services Using a Carrier's Own Facilities Advantage Cellular has demonstrated that it satisfies the requirement of section 214(e)(1)(A) that it offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services<sup>44</sup> Advantage Cellular states that it intends to provide the supported services using its existing network infrastructure, which includes "the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by the company to serve its existing customers"<sup>45</sup>

15 Advertising Supported Services Advantage Cellular has demonstrated that it satisfies the requirement of section 214(e)(1)(B) to advertise the availability of the supported services and the charges therefor using media of general distribution<sup>46</sup> In addition to its current advertising, Advantage Cellular has committed to specific methods to publicize the availability of Lifeline and Link-up service and improved service in unserved or underserved areas<sup>47</sup>

### C. Public Interest Analysis

16 We conclude that it is "consistent with the public interest, convenience, and necessity" to designate Advantage Cellular as an ETC for the portion of its requested service area that is served by the non-rural telephone company BellSouth Telecommunications, Inc (BellSouth) We also conclude that it is in the public interest to designate Advantage Cellular as an ETC in the study areas of six of the seven affected rural telephone companies In determining whether the public interest is served, the Commission places the burden of proof upon the ETC applicant<sup>48</sup> Advantage Cellular has satisfied the burden of proof in establishing that its universal service offering in these areas will provide benefits to rural consumers We do not designate Advantage Cellular as an ETC, however, for the study area of United Telephone, the Cookeville South and Baxter wire centers in the study area of Frontier, and the McMinnville and Cookeville wire centers in the study area of Twin Lakes<sup>49</sup>

17 Non-Rural Study Areas We conclude, as required by section 214(e)(6) of the Act, that it is "consistent with the public interest, convenience, and necessity" to designate Advantage Cellular as an

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<sup>42</sup>See Advantage Cellular February 17, 2004 Supplement at 8-9 Upon review of this information, if the Commission believes Advantage Cellular is not satisfying its commitments to provide supported services to customers, the Commission may exercise its authority to revoke Advantage Cellular's ETC designation See *Highland Cellular Order*, 19 FCC Rcd at 6441-42, para 43, *Virginia Cellular Order*, 19 FCC Rcd at 1584-85, para 46 See also 47 U.S.C. § 254(e)

<sup>43</sup>See *infra* para 33

<sup>44</sup>See Advantage Cellular Petition at 14, see also Advantage Cellular Petition at Exhibit E

<sup>45</sup>*Id*

<sup>46</sup>47 C.F.R. § 214(e)(1)(B)

<sup>47</sup>See Advantage Cellular Petition at 14-15, Advantage Cellular February 17, 2004 Supplement at 8,

<sup>48</sup>See *Highland Cellular Order*, 19 FCC Rcd at 6431, para 20, *Virginia Cellular Order*, 19 FCC Rcd at 1574-75, para 26

<sup>49</sup>See *infra* paras 23-24

ETC for its requested service area that is served by the non-rural telephone company BellSouth<sup>50</sup> We note that the Bureau previously has found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) of the Act<sup>51</sup> In the *Virginia Cellular Order* and the *Highland Cellular Order*, however, the Commission determined that designation of an additional ETC in a non-rural telephone company's study area based merely upon a showing that the requesting carrier complies with section 214(e)(1) of the Act does not necessarily satisfy the public interest in every instance<sup>52</sup> Advantage Cellular's public interest showing here is sufficient based on the detailed commitments Advantage Cellular has made to ensure that it provides high quality service throughout the proposed rural and non-rural service areas, indeed, given our finding that Advantage Cellular has satisfied the more rigorous public interest analysis for certain rural study areas, it follows that its commitments satisfy the public interest requirements for non-rural areas<sup>53</sup>

18 Rural Study Areas We also conclude, as required by section 214(e)(6) of the Act, that it is "consistent with the public interest, convenience, and necessity" to designate Advantage Cellular as an ETC for its requested service area that is served by certain rural telephone companies, as provided in Appendices B and C<sup>54</sup> In considering whether designation of Advantage Cellular as an ETC in areas served by rural telephone companies will serve the public interest, we have considered whether the benefits of an additional ETC in such study areas outweigh any potential harms Specifically, we weigh the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitors service offering, any commitments made regarding quality of telephone service, and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame<sup>55</sup>

19 Contrary to the claims of certain commenters, we find that Advantage Cellular's universal service offering will provide a variety of benefits to customers<sup>56</sup> For instance, universal service support will enable Advantage Cellular to accelerate the deployment of its advanced wireless services to rural Tennesseans<sup>57</sup> Advantage Cellular will also use support to offer a basic universal service package to subscribers who are eligible for Lifeline support<sup>58</sup> In addition, Advantage Cellular has committed to provide service to any requesting customers in the service areas in which it is designated as an ETC Also, the mobility of Advantage Cellular's wireless service will provide benefits such as access to

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<sup>50</sup>See 47 U.S.C. § 214(e)(6) See also Appendix B

<sup>51</sup>See, e.g., Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier, Memorandum Opinion and Order, CC Docket No. 96-45, 16 FCC Rcd 39 (2000)

<sup>52</sup>See *Virginia Cellular Order*, 19 FCC Rcd at 1575, para. 27, *Highland Cellular Order*, 19 FCC Rcd at 6431-32, para. 21

<sup>53</sup>See *Virginia Cellular Order*, 19 FCC Rcd at 1572-73, para. 21, *Highland Cellular Order*, 19 FCC Rcd at 6431-32, para. 21

<sup>54</sup>See 47 U.S.C. § 214(e)(6) See also Appendix B & C

<sup>55</sup>See e.g., *Highland Cellular Order*, 19 FCC Rcd at 6435, at para. 28, *Virginia Cellular Order*, 19 FCC Rcd at 1573, para. 22

<sup>56</sup>See Tennessee Independent Telephone Companies Comments at 3-4, Frontier June 30, 2003 Comments at 2-6, Frontier May 7, 2004 Comments at 5

<sup>57</sup>See Advantage Cellular February 17, 2004 Supplement at 4

<sup>58</sup>See Advantage Cellular February 17, 2004 Supplement at 4-5

emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities<sup>59</sup> Moreover, Advantage Cellular states that it will provide rural Tennessee residents with new services comparable to those provided in urban areas, including mobility, basic voicemail, voice message notification, numeric paging, call forwarding, three-way calling, call waiting, premium voice mail, voice dial, and two-way Short Message Service<sup>60</sup> Advantage Cellular has also made service quality commitments comparable to those made by petitioners in the *Virginia Cellular* and *Highland Cellular Orders*, including compliance with the Cellular Telecommunications Industry Association (CTIA) Consumer Code for Wireless Service<sup>61</sup>

20 In addition, designation of Advantage Cellular as an ETC in the study areas served by the rural telephone companies Ben Lomand Rural Telephone Cooperative, Inc (Ben Lomand) and Dekalb Telephone Cooperative, Inc d/b/a DTC Communications (DTC) does not create creamskimming concerns Rural creamskimming occurs when competitors seek to serve only the low-cost, high revenue customers in a rural telephone company's study area<sup>62</sup> Because Advantage Cellular requests ETC designation in the entire study areas of Ben Lomand and DTC, designation of Advantage Cellular as an ETC in these study areas does not create creamskimming or related concerns<sup>63</sup>

21 We note, however, that the contours of Advantage Cellular's CMRS licensed area differ from the Frontier, Bledsoe, Twin Lakes, North Central, and United Telephone study areas and, therefore, Advantage Cellular will be unable to provide facilities-based service to the entire study areas of these companies<sup>64</sup> Moreover, Advantage Cellular has not committed to serve these study areas in their entirety through resale of other wireless and wireline services<sup>65</sup> Consistent with the Commission's findings in the

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<sup>59</sup>See Advantage Cellular February 17, 2004 Supplement at 4-5, *Virginia Cellular Order*, 19 FCC Rcd at 1577, para 29 See also *Twelfth Report and Order*, 15 FCC Rcd at 12212, para 3

<sup>60</sup>See Advantage Cellular Petition at 20-25, Advantage Cellular February 17, 2004 Supplement at 4-5 In addition, Advantage Cellular also provides its customers with a local calling area that is larger than those of the incumbent local exchange carriers it competes against, and therefore Advantage Cellular customers are subject to fewer toll charges See Advantage Petition at 21-23 See also *Virginia Cellular Order*, 19 FCC Rcd at 1577, para 29

<sup>61</sup>See Advantage Cellular February 17, 2004 Supplement at 4-5, *CTIA, Consumer Code for Wireless Service*, available at [http://www.wow-com.com/pdf/The\\_Code.pdf](http://www.wow-com.com/pdf/The_Code.pdf) Contrary to the contention raised by Frontier and consistent with the Commission's findings in the *Virginia Cellular Order* and *Highland Cellular Order*, we find that Advantage Cellular's commitments to follow the CTIA code, annually provide the number of complaints per 1,000 handsets, and its other commitments to service quality discussed herein adequately address any concerns about the quality of Advantage Cellular's wireless service See *Virginia Cellular Order*, 19 FCC Rcd at 1576, para 30, *Highland Cellular Order*, 19 FCC Rcd at 6432, para 24, Frontier May 7, 2004 Comments at 7-8

<sup>62</sup>See *Federal-State Joint Board on Universal Service*, CC Docket No 96-45, Recommended Decision, 12 FCC Rcd 87, 180, para 172 (1996) "Creamskimming" refers to instances in which a carrier serves only the customers that are the least expensive to serve, thereby undercutting the ILEC's ability to provide service throughout the area See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No, 96-45, 12 FCC Rcd 8776, 8881-2, para 189 (1997)

<sup>63</sup>See e.g., *Highland Cellular Order*, 19 FCC Rcd at 6434-35, at para 26, *Virginia Cellular Order*, 19 FCC Rcd at 1578, para 32 Although Advantage Cellular's CMRS licensed service area excludes a small part of the Ben Lomand and DTC study areas, Advantage Cellular has committed to offer service to customers in the entirety of these study areas through a combination of its own facilities and resale of either wireless or wireline services See Advantage Cellular February 17, 2004 Supplement at 9, 13-14

<sup>64</sup>See Advantage Cellular May 18, 2004 Supplement at 5-9

<sup>65</sup>Although Advantage Cellular's CMRS licensed service area in Tennessee only partially covers certain wire centers in the study areas of North Central, Bledsoe, Twin Lakes, Frontier, and United Telephone, consistent with the finding in the *Highland Cellular Order* that an ETC may not be designated below the wire center level of a rural

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*Virginia Cellular Order* and *Highland Cellular Order*, and contrary to the claims of certain commenters, we nevertheless find it appropriate to designate Advantage Cellular below the study area level of rural telephone companies when such designation is unlikely to create creamskimming concerns<sup>66</sup>

22 We have analyzed the record before us in this matter and find that, for the study areas of Bledsoe and North Central, Advantage Cellular's designation is unlikely to have a creamskimming effect and is, therefore, in the public interest. Our analysis of the population density of each of the affected wire centers reveals that Advantage Cellular will not be serving only low-cost areas to the exclusion of high-cost areas. Although there are other factors that define high-cost areas, a lower population density generally indicates a higher cost area<sup>67</sup>. The average population density for the Bledsoe wire centers for which we grant Advantage Cellular ETC designation is 24 persons per square mile and the average population density for Bledsoe's remaining wire centers is 35 persons per square mile<sup>68</sup>. Because the Bledsoe wire centers that Advantage Cellular can serve have a lower population density, and therefore probably higher costs than the remaining wire centers, we conclude that ETC designation will not result in creamskimming. The average population density for the North Central wire centers for which we grant Advantage Cellular ETC designation is 37 persons per square mile and the average population density for North Central's remaining wire centers is 65 persons per square mile<sup>69</sup>. Because the North Central wire centers that Advantage Cellular can serve have a lower population density, and therefore probably higher costs than the remaining wire centers, we also conclude that ETC designation will not result in creamskimming.

23 Consistent with the Commission's findings in *Virginia Cellular Order* and the *Highland Cellular Order*, we find that designation of Advantage Cellular in the wire centers it seeks designation in

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incumbent telephone company, Advantage Cellular has agreed to serve customers in the entirety of these wire centers through a combination of its own facilities and roaming or resale agreements with other carriers. See Advantage Cellular May 18, 2004 Supplement at 5-9, *Highland Cellular Order*, 19 FCC Rcd at 6438, para. 33. In addition, although Advantage Cellular provides population density data for the portions of the wire centers that its CMRS service area partially covers, consistent with the *Virginia Cellular Order* and *Highland Cellular Order*, we conduct our creamskimming analysis based on density data for the entire wire centers for which Advantage Cellular seeks designation as an ETC. See *Virginia Cellular Order*, 19 FCC Rcd at 1579, paras. 34-35, *Highland Cellular Order*, 19 FCC Rcd at 6435-38, paras. 28-33.

<sup>66</sup>See *Virginia Cellular Order*, 19 FCC Rcd at 1578-1580, paras. 32-35, *Highland Cellular Order*, 19 FCC Rcd at 6434-38, paras. 26-32. See also Tennessee Independent Telephone Companies Comments at 4-8, Frontier June 30, 2003 Comments at 6-11.

<sup>67</sup>See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Report and Order, 16 FCC Rcd 19613, 19628, para. 28 (2001) (MAG Order), recon. pending (discussing Rural Task Force White Paper # 2 at <http://www.wutc.wa.gov/rtf>).

<sup>68</sup>See Advantage Cellular May 18, 2004 Supplement at Exhibit A. The average population density in the Bledsoe study area is 30 persons per square mile. See *id*.

<sup>69</sup>See Advantage Cellular May 18, 2004 Supplement at Exhibit A. The average population density in the North Central study area is 62 persons per square mile. See *id*.

the Frontier and Twin Lakes study areas raises creamskimming concerns<sup>70</sup> Advantage Cellular states, however, that should the Commission find creamskimming concerns in the Frontier and Twin Lakes study areas, it will not seek designation in the higher density wire centers in those study areas<sup>71</sup> Specifically, Advantage Cellular has agreed not to seek designation in the McMinnville and Cookeville wire centers in Frontier's study area and the Cookeville South and Baxter wire centers in the Twin Lakes study area in order to alleviate any creamskimming concerns<sup>72</sup> Accordingly, we find that designating Advantage Cellular in only the lower density wire centers in these study areas is unlikely to have the effect of creamskimming, and therefore is in the public interest<sup>73</sup> Absent the higher density wire centers that Advantage Cellular agrees to withdraw, our analysis of the population density of each of the remaining wire centers for which Advantage Cellular seeks designation reveals that Advantage Cellular will no longer be serving only low-cost areas to the exclusion of high-cost areas The average population density for the Twin Lakes wire center for which we grant Advantage Cellular ETC designation is 34 persons per square mile and the average population density for Twin Lakes' remaining wire centers is 40 persons per square mile<sup>74</sup> The average population density for the Frontier wire centers for which we grant Advantage Cellular ETC designation is 61 persons per square mile and the average population density for Frontier's remaining wire centers is 105 persons per square mile<sup>75</sup>

24 We conclude, however, that it would not be in the public interest to designate Advantage Cellular as an ETC in the study area of United Telephone because we find that designation of Advantage Cellular for the requested wire center raises creamskimming concerns similar to those identified by the Commission in the *Virginia Cellular Order* and *Highland Cellular Order*<sup>76</sup> Advantage Cellular's CMRS service area covers only the Estill Springs wire center in the study area of United Telephone<sup>77</sup> Based on

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<sup>70</sup>See *Virginia Cellular Order*, 19 FCC Rcd at 1579-80, para 35, *Highland Cellular Order*, 19 FCC Rcd at 6436-37, paras 31-32 See also Frontier June 30, 2003 Comments at 7 (arguing that Advantage Cellular should not be allowed to serve only the low-cost wire centers in Frontier's study area)

<sup>71</sup>See Advantage Cellular October 15 Supplement

<sup>72</sup>See *id*

<sup>73</sup>See *Highland Cellular Order*, 19 FCC Rcd at 6438, para 33 (granting petitioner's request to withdraw one of the three wire centers in a rural telephone company's study area for which petitioner sought ETC designation)

<sup>74</sup>See Advantage Cellular May 18, 2004 Supplement at Exhibit A The Cookeville South wire center (196 persons per square mile) and the Baxter wire center (53 persons per square mile) are the first and third highest-density wire centers in Twin Lakes' study area that Advantage Cellular proposes to serve See Advantage Cellular May 18, 2004 Supplement at Exhibit A In contrast, the Chestnut Mound wire center has a population density of 34 persons per square mile See Advantage Cellular May 18, 2004 Supplement at Exhibit A We note that the average population density in the Twin Lakes study area is 40 persons per square mile See *id*

<sup>75</sup>See Advantage Cellular May 18, 2004 Supplement at Exhibit A The McMinnville wire center (814 persons per square mile) and the Cookeville wire center (323 persons per square mile) are the two highest-density wire centers in Frontier's study area that Advantage proposes to serve See Advantage Cellular May 18, 2004 Supplement at Exhibit A In contrast, the Sparta wire center has a population density of 63 persons per square mile and the Pleasant Hill wire center has a population density of 57 persons per square mile See Advantage Cellular May 18, 2004 Supplement at Exhibit A We also note that the average population density in the Frontier study area is 97 persons per square mile See *id*

<sup>76</sup>See *Virginia Cellular Order*, 19 FCC Rcd at 1579-80, para 35, *Highland Cellular Order*, 19 FCC Rcd at 6436-37, para 31

<sup>77</sup>United Telephone's study area consists of the College Grove, Nolensville, Unionville, and Estill Springs wire centers Although Advantage initially stated that its licensed service area covered both the Estill Springs and College Grove wire centers, it later amended its petition to reflect that Advantage Cellular only serves the Estill

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our examination of the population densities of the wire centers in the United Telephone study area, we find that Estill Springs is one of the highest-density wire centers in the study area of United Telephone, and that there is a significant disparity in density between the Estill Springs wire center and the United Telephone wire centers outside Advantage Cellular's service area. The population density in the Estill Springs wire center is approximately 130 persons per square mile, while the average population density of the remaining wire centers in United Telephone's study area is approximately 77 persons per square mile.<sup>78</sup> We therefore find that designating Advantage Cellular as an ETC only for the Estill Springs wire center has potential to undermine significantly United Telephone's ability to serve its entire study area. Specifically, the widely disparate population densities in United Telephone's study area and the status of Estill Springs as one of United Telephone's lower-cost, high-density wire centers could result in such an ETC designation placing United Telephone at a sizeable unfair competitive disadvantage.<sup>79</sup> Accordingly, we find that designation of Advantage Cellular in the Estill Springs wire center would not be in the public interest.

25 Finally, the Commission recently sought comment on the *Recommended Decision* of the Federal-State Joint-Board on Universal Service (Joint-Board) concerning the process for designation of ETCs and the Commission's rules regarding high-cost universal service support.<sup>80</sup> Verizon Telephone Companies (Verizon) and Frontier argue that, in light of the impact that ETC designations have on the universal service fund, the Commission should not rule on any pending ETC petitions until the completion of the rulemaking proceeding.<sup>81</sup> We believe that grant of this ETC designation will not dramatically burden the universal service fund. Specifically, assuming that Advantage Cellular captures each and every customer located in the affected study areas, the overall size of the high-cost support mechanisms would not significantly increase.<sup>82</sup> Nevertheless, we continue to be mindful of the potential impact on the universal service fund due to the rapid growth in the number of competitive ETCs. The outcome of the rulemaking proceeding could potentially impact, among other things, the support that

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Springs wire center. See Advantage Supplement at 19, Advantage Second Supplement at 2, 9, Advantage October 14 Supplement.

<sup>78</sup>See Advantage Cellular Second Supplement at Exhibit A. The average population density in the United Telephone study area is 81 persons per square mile. See *id*.

<sup>79</sup>See *Virginia Cellular Order*, 19 FCC Rcd at 1579-80, para. 35 (denying designation where the petitioner sought to serve a wire center containing approximately 273 persons per square mile, while the average density of the remaining wire centers in the same study area was 33 persons per square mile), *Highland Cellular Order*, 19 FCC Rcd at 6436-38, paras. 31-32 (denying designation where petitioner sought to serve primarily the high-density wire centers in a rural telephone company's study area).

<sup>80</sup>*Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 04-127 (rel. June 8, 2004) (*ETC High-Cost NPRM*), *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257 (2004) (*Joint-Board Recommended Decision*). Among other things, the Joint Board recommended that the Commission adopt permissive federal guidelines for states to consider when designating ETCs under section 214 of the Act. *Joint-Board Recommended Decision*, 19 FCC Rcd at 4258, para. 2.

<sup>81</sup>See Verizon May 7, 2004 Opposition at 1-5, Verizon June 30, 2003 Opposition at 1, Frontier May 7, 2004 Comments at 4-5.

<sup>82</sup>The total amount of high-cost support available to the incumbent carriers in the rural study areas where we grant Advantage Cellular ETC designation is only approximately 0.419% of the total high-cost support available to all ETCs. See Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter of 2004, Appendix HC 1 (Universal Service Administrative Company, Aug. 2, 2004) (determining that the total amount of high-cost universal service support available to the incumbent carriers in the affected rural study areas is projected to be \$3,979,488 out of a total of \$949,710,787 in the fourth quarter of 2004).

Advantage Cellular and other competitive ETCs receive in the future and the criteria used for continued eligibility to receive support<sup>83</sup>

26 We further disagree with Verizon's argument that we should not designate any additional competitive ETCs because doing so could have a significant impact on the access charge plan established by the Commission's *CALLS Order*<sup>84</sup>. In the voluntarily negotiated CALLS plan, price cap carriers, *inter alia*, agreed to establish a \$650 million target for interstate access support. Similar to other types of universal service support, interstate access support is portable to competitive ETCs<sup>85</sup>. Consequently, because interstate access support is targeted to \$650 million, when a competitive ETC receives interstate access support, there is a corresponding reduction in support available to incumbent carriers. As the CALLS plan was being considered, portability of support to competitive ETCs and its relation to the \$650 million target was contemplated<sup>86</sup>. Accordingly, the CALLS plan is functioning as contemplated by the agreement. We further note that the CALLS plan was designed for a five-year period, which ends in 2005<sup>87</sup>. As part of its consideration of the appropriate regulatory mechanism to replace the CALLS plan, the Commission can examine whether the interstate access support mechanism remains sufficient<sup>88</sup>.

#### D. Designated Service Areas

27 We designate Advantage Cellular as an ETC in the requested areas served by the non-rural telephone company, BellSouth, as listed in Appendix A. We designate Advantage Cellular as an ETC in Tennessee for the entire study areas served by the rural telephone companies Ben Lomand and DTC as listed in Appendix B. Subject to the TRA's agreement on redefining the service areas of Bledsoe, Frontier, North Central, and Twin Lakes, we also designate Advantage Cellular as an ETC for the wire centers listed in Appendix C. Finally, for the reasons described above, we do not designate Advantage Cellular as an ETC in the study area served by United Telephone, the Cookeville South and Baxter wire centers in the study area of Frontier, and the McMinnville and Cookeville wire centers in the study area of Twin Lakes<sup>89</sup>.

#### E. Redefining Rural Company Service Areas

28 In order to designate Advantage Cellular as an ETC in a service area that is different from

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<sup>83</sup>See *ETC High-Cost NPRM*, FCC 04-127, at para. 3, *Joint-Board Recommended Decision*, 19 FCC Rcd at 4279-80, paras. 56, 58, *Virginia Cellular Order*, 19 FCC Rcd at 1565, para. 3. See also Tennessee Independent Telephone Companies Comments at 6-8, Frontier June 30, 2003 Comments at 11.

<sup>84</sup>See Verizon May 7, 2004 Opposition at 2-3, *Access Charge Reform*, Sixth Report and Order, CC Docket Nos. 96-262 and 94-1, Report and Order, CC Docket No. 99-249, Eleventh Report and Order, CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) (subsequent history omitted) (*CALLS Order*).

<sup>85</sup>See 47 C.F.R. § 54.307(a).

<sup>86</sup>See CTIA Supplement Reply Comments at 4-5 (quoting Comments of Coalition for Affordable Local and Long Distance Services (CALLS), CC Docket Nos. 94-1, 96-45, 96-262, 99-249, filed Nov. 12, 1999).

<sup>87</sup>See *CALLS Order*, 15 FCC Rcd at 12977, 13046, paras. 35-36, 201.

<sup>88</sup>See *id.* at 12977, para. 36 ("[A]s the term of the CALLS Proposal nears its end, we envision that the Commission will conduct a proceeding to determine whether and to what degree it can deregulate price cap LECs to reflect the existence of competition. At that time, the Commission can also examine whether the interstate access universal service support mechanism remains sufficient.") See also Verizon June 30, 2003 Opposition (proposing changes to the Commission's rules concerning distribution of interstate access support under the CALLS plan).

<sup>89</sup>See *supra* paras. 23-24.

the affected rural telephone company study area, we must redefine the service areas of the rural telephone company in accordance with section 214(e)(5) of the Act.<sup>90</sup> Under section 214(e)(5), “[i]n the case of an area served by a rural telephone company, ‘service area’ means such company’s ‘study area’ unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.”<sup>91</sup> Under section 54 207(d)(1), the Commission must petition a state commission with the proposed definition according to that state commission’s procedures.<sup>92</sup> In that petition, the Commission must provide its proposal for redefining the service area and its decision presenting reasons for adopting the new definition, including an analysis that takes into account the recommendations of the Joint Board.<sup>93</sup> When the Joint Board recommended that the Commission retain the current study areas of rural telephone companies as the service areas for the rural telephone companies, the Joint Board made the following observations: (1) the potential for “cream skimming” is minimized by retaining study areas because competitors, as a condition of eligibility, must provide services throughout the rural telephone company’s study area; (2) the Act, in many respects, places rural telephone companies on a different competitive footing from other local telephone companies; and (3) there would be an administrative burden imposed on rural telephone companies by requiring them to calculate costs at something other than the study area level.<sup>94</sup>

29 Consistent with prior rural service area redefinitions and with the recommendations of the Joint-Board, we redefine each wire center in the study areas of Bledsoe, Frontier, North Central, and Twin Lakes as a separate service area.<sup>95</sup> First, as discussed above, we conclude that redefining the Bledsoe, Frontier, North Central, and Twin Lakes service areas at the wire center level should not result in opportunities for creamskimming.<sup>96</sup> Second, we find no evidence that the proposed redefinition will harm Bledsoe, Frontier, North Central, and Twin Lakes because redefining the service area of the affected rural telephone company will not change the amount of universal service support that is available to the incumbents.<sup>97</sup> Third, we find that redefining the Bledsoe, Frontier, North Central, and Twin Lakes service areas as proposed will not impose administrative burdens on the rural telephone companies because it will not require them to determine their costs on any basis other than the study area level.<sup>98</sup>

30 Our decision to redefine the service areas of Bledsoe, Frontier, North Central, and Twin Lakes is subject to the review and final agreement of the TRA in accordance with applicable requirements

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<sup>90</sup>See 47 U.S.C. § 214(e)(5).

<sup>91</sup>47 U.S.C. § 214(e)(5).

<sup>92</sup>See 47 C.F.R. § 54.207(d)(1).

<sup>93</sup>See 47 C.F.R. § 54.207(d)(1).

<sup>94</sup>See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179-80, paras. 172-74 (1996) (*1996 Recommended Decision*).

<sup>95</sup>See *RCC Holdings ETC Designation Order*, 17 FCC Rcd at 23547, para. 37.

<sup>96</sup>See *Virginia Cellular Order*, 19 FCC Rcd at 1582-83, para. 42, *supra* paras. 23-24. We note that any future competitive ETC designation for the redefined service areas of Bledsoe and North Central would continue to require a finding that such designation is in the public interest, including an analysis of whether such designation would result in creamskimming.

<sup>97</sup>See *Virginia Cellular Order*, 19 FCC Rcd at 1583, para. 43.

<sup>98</sup>See *Virginia Cellular Order*, 19 FCC Rcd at 1583, para. 44. Rather, the redefinition merely enables competitive ETCs to serve areas that are smaller than the entire ILEC study area.



under section 54 207 or our rules. Accordingly, we submit our redefinition proposal to the TRA and request that it examine such proposal based on its unique familiarity with the rural areas in question. Upon the effective date of the agreement of the TRA with our redefinition of the service areas of Bledsoe, Frontier, North Central, and Twin Lakes, our designation of Advantage Cellular as an ETC in the areas served by Bledsoe, Frontier, North Central, and Twin Lakes, as set forth herein, shall also take effect. If, after its review, the TRA determines that it does not agree with the redefinition proposal herein, we will reexamine Advantage Cellular's petition with regard to redefining service areas of Bledsoe, Frontier, North Central, and Twin Lakes.

#### F. Regulatory Oversight

31 Advantage Cellular is obligated under section 254(e) of the Act to use high-cost support "only for the provision, maintenance, and upgrading of facilities and services for which support is intended" and is required under sections 54 313 and 54 314 of the Commission's rules to certify annually that it is in compliance with this requirement.<sup>99</sup> On May 9, 2003, Advantage Cellular certified to the Commission that, consistent with sections 54 313 and 54 314 of the Commission's rules, all federal high-cost support will be "used only for the provision, maintenance and upgrading of facilities and services for which support is intended pursuant to Section 254(e)" of the Act in the area for which Advantage Cellular is designated as an ETC.<sup>100</sup> Advantage Cellular further requested that the Commission find that Advantage Cellular has met the appropriate certification filing deadline in order for it to begin receiving support as of its ETC designation date.<sup>101</sup> Accordingly, we treat Advantage Cellular's certification as timely so that it can begin receiving universal service support as of the date of its ETC designation.<sup>102</sup>

32 Separate and in addition to its annual certification filing under sections 54 313 and 54 314, Advantage Cellular has committed to submit records and documentation on an annual basis detailing (1) its progress towards meeting its build-out plans, (2) the number of complaints per 1,000 handsets, and (3) how many requests for service from potential customers were unfulfilled for the past year.<sup>103</sup> We require Advantage Cellular to submit these additional data to the Commission and USAC on October 1 of each year beginning October 1, 2005.<sup>104</sup> We find that reliance on Advantage Cellular's

<sup>99</sup> 47 C.F.R. §§ 54.313, 54.314.

<sup>100</sup> See Letter from Wayne Gassaway, Advantage Cellular Systems, to Marlene H. Dortch, FCC, dated May 9, 2003.

<sup>101</sup> See Advantage Cellular Petition at 26.

<sup>102</sup> Sections 54.313 and 54.314 provide that the certification must be filed by October 1 of the preceding calendar year to receive support beginning in the first quarter of a subsequent calendar year. 47 C.F.R. § 54.313(d)(3), 54.314(d)(3). If the October 1 deadline for first quarter support is missed, the certification must be filed by January 1 for support to begin in the second quarter, by April 1 for support to begin in the third quarter, and by July 1 for support to begin in the fourth quarter. See *id.* In instances where carriers are not subject to the jurisdiction of a state, the Commission allows an ETC to certify directly to the Commission and USAC that federal high-cost support will be used in a manner consistent with section 254(e). See 47 C.F.R. § 54.313(b), 54.314(b). Moreover, although we accept Advantage Cellular's certification as timely so that it can receive support as of its ETC designation date, consistent with the Commission's rules, the TRA is not precluded from filing future certifications on behalf of Advantage Cellular stating that universal service support is being used for its intended purposes. See 47 C.F.R. § 54.313, 54.314.

<sup>103</sup> See Advantage Cellular February 17, 2004 Supplement at 8-9, *Highland Cellular Order*, 19 FCC Rcd at 6441-42, para. 43, *Virginia Cellular Order*, 19 FCC Rcd at 1584-85, para. 46.

<sup>104</sup> Advantage Cellular's initial submission concerning consumer complaints per 1,000 handsets and unfulfilled service requests will include data from the date ETC designation is granted through June 30, 2005. Future submissions concerning consumer complaints and unfulfilled service requests will include data from July 1 of the previous calendar year through June 30 of the reporting calendar year.

commitments is reasonable and consistent with the public interest, the Act, and the Fifth Circuit decision in *Texas Office of Public Utility Counsel v FCC*<sup>105</sup> We further conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring that Advantage Cellular satisfies its obligation under section 214(e) of the Act to provide supported services throughout its designated service area<sup>106</sup>

33 We note that the Commission may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the high-cost support it receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the areas where it is designated as an ETC<sup>107</sup> Advantage Cellular will be required to provide such records and documentation to the Commission and USAC upon request We further emphasize that if Advantage Cellular fails to fulfill the requirements of the statute, the Commission's rules, or the terms of this Order after it begins receiving universal service support, the Commission may exercise its authority to revoke this ETC designation<sup>108</sup> The Commission also may assess forfeitures for violations of Commission rules and orders<sup>109</sup>

#### IV. ANTI-DRUG ABUSE ACT CERTIFICATION

34 Pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued pursuant to section 214 of the Act, unless the applicant certifies that neither it, nor any party to its application, is subject to a denial of federal benefits, including Commission benefits<sup>110</sup> This certification must also include the names of individuals specified by section 1 2002(b) of the Commission's rules<sup>111</sup> Advantage Cellular has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988<sup>112</sup> We find that Advantage Cellular has satisfied the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1 2001-1 2003 of the Commission's rules

#### V. ORDERING CLAUSES

35 Accordingly, IT IS ORDERED that, pursuant to the authority contained in section

<sup>105</sup>*Texas Office of Public Utility Counsel v FCC*, 183 F 3d 393, 417-18 (5<sup>th</sup> Cir 1999) In *TOPUC v FCC*, the Fifth Circuit held that that nothing in section 214(e)(2) of the Act prohibits states from imposing additional eligibility conditions on ETCs as part of their designation process See *id* Consistent with this holding, we find that nothing in section 214(e)(6) prohibits the Commission from imposing additional conditions on ETCs when such designations fall under its jurisdiction See also *Highland Cellular Order*, 19 FCC Rcd at 6441-42, para 43, *Virginia Cellular Order*, 19 FCC Rcd at 1584-85, para 46

<sup>106</sup>47 U S C § 214(e)

<sup>107</sup>47 U S C §§ 220, 403, 47 C F R § 54.313, 54.314

<sup>108</sup>See *Declaratory Ruling*, 15 FCC Rcd at 15174, para 15, *Highland Cellular Order*, 19 FCC Rcd at 6441-42, para 43, *Virginia Cellular Order*, 19 FCC Rcd at 1584-85, para 46 See also 47 U S C § 254(e)

<sup>109</sup>See 47 U S C § 503(b)

<sup>110</sup>47 U S C § 1 2002(a), 21 U S C § 862

<sup>111</sup>See *ETC Procedures PN*, 12 FCC Rcd at 22949 Section 1 2002(b) provides that a "party to the application" shall include "(1) If the applicant is an individual, that individual, (2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting/and or non-voting) of the petitioner, and (3) If the applicant is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership" 47 C F R § 1 2002(b)

<sup>112</sup>See Advantage Cellular Petition at Exhibit L

214(e)(6) of the Communications Act, 47 U S C § 214(e)(6), Advantage Cellular Cellular Systems, Inc IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER for portions of its licensed service area in the state of Tennessee to the extent described herein

36 IT IS FURTHER ORDERED that, pursuant to the authority contained in section 214(e)(5) of the Communications Act, 47 U S C § 214(e)(5), and sections 54 207(d) and (e) of the Commission's rules, 47 C F.R. §§ 54 207(d) and (e), the request of Advantage Cellular Systems, Inc to redefine the service areas of Citizens Telecommunications Company of Tennessee d/b/a Frontier Communications, Bledsoe Telephone Cooperative, Inc , Twin Lakes Telephone Cooperative Corp , and North Central Telephone Cooperative, Inc in Tennessee to IS GRANTED to the extent described herein and SUBJECT TO the agreement of the Tennessee Regulatory Authority with the Commission's redefinition of the service area For Citizens Telecommunications Company of Tennessee d/b/a Frontier Communications, Bledsoe Telephone Cooperative, Inc , Twin Lakes Telephone Cooperative Corp , and North Central Telephone Cooperative, Inc , upon the effective date of the agreement of the Tennessee Regulatory Authority with the Commission's redefinition of such service areas, this designation of Advantage Cellular Systems, Inc as an eligible telecommunications carrier for such area as set forth herein shall also take effect

37 IT IS FURTHER ORDERED that, pursuant to the authority contained in section 214(e)(5) of the Communications Act, 47 U S C § 214(e)(5), and sections 54 207(d) and (e) of the Commission's rules, 47 C F R §§ 54 207(d) and (e), the request of Advantage Cellular Systems, Inc to redefine the service area of United Telephone Company IS DENIED

38 IT IS FURTHER ORDERED that a copy of this Order SHALL BE transmitted by the Office of the Secretary to the Tennessee Regulatory Authority and the Universal Service Administrative Company

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey J Carlisle  
Chief, Wireline Competition Bureau

APPENDIX A

TENNESSEE NON-RURAL WIRE CENTERS  
FOR INCLUSION IN ADVANTAGE CELLULAR'S SERVICE AREA

BellSouth Telecommunications, Inc. (study area code 295185)

Manchester Wire Center (wire center code MNCHTNMA)

Carthage Wire Center (wire center code CRTHTNMA)

Lebanon Wire Center (wire center code LBNNTNMA)

Normandy Wire Center (wire center code WRTRTNMT)

Tullahoma Wire Center (wire center code TLLHTNMA)

Watertown Wire Center (wire center code WTTWTNMA)

**APPENDIX B**

**TENNESSEE RURAL TELEPHONE COMPANY STUDY AREAS  
FOR INCLUSION IN ADVANTAGE CELLULAR'S ETC SERVICE AREA**

**Ben Lomand Rural Telephone Cooperative, Inc. (study area code 290553)**

**Dekalb Telephone Cooperative, Inc. d/b/a DTC Communications (study area code 290562)**

APPENDIX C

TENNESSEE RURAL TELEPHONE COMPANY WIRE CENTERS  
FOR INCLUSION IN ADVANTAGE CELLULAR'S ETC SERVICE AREA

**Bledsoe Telephone Cooperative, Inc.**

Pikeville Wire Center (wire center code PKVLTNXA)

Falls Creek Falls Wire Center (wire center code FCFLTNTXA)

**North Central Telephone Cooperative, Inc.**

Pleasant Shade Wire Center (wire center code PLSHTNTXA)

Defeated Wire Center (wire center code DFTDTNTXA)

**Twin Lakes Telephone Cooperative Corp.**

Chestnut Mound Wire Center (wire center code CHMNTNTXA)

**Citizens Telecommunications Company of Tennessee d/b/a Frontier Communications**

Pleasant Hill Wire Center (wire center code PLHLTNTXA)

Sparta Wire Center (wire center code SPRTTNTXA)

## CLASPlus VOTE SHEET

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CIRCULATE ITEM ADOPTED ON Wednesday, October 27 , 2004

## ACTION BY CIRCULATION

FCC Number 04-260

CLAS Number. 040257

Minute Number. WCB\_C\_215\_04

MTS Number.

Title In the Matter of Federal State Joint Board on Universal Service, Business Service Center, Inc , Mobile Phone of Texas, Inc , and 3 Rivers PCS, Inc. Petition for Reconsideration of Small Wireless Carrier Group

Type of Document ORDER

Bureau Contact CATHY CARPINO 418-1593

Bureau Office WCB

Circulate Date Date Adopted

09/22/2004 10/27/2004

Docket Number

96-45

## COMMISSION ACTION

Commissioner	Vote	Statement	Editorial Changes
Powell	Approve	<input type="checkbox"/>	<input type="checkbox"/>
Abernathy	Approve	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Copps	Approve	<input type="checkbox"/>	<input type="checkbox"/>
Martin	Approve	<input type="checkbox"/>	<input type="checkbox"/>
Adelstein	Approve	<input type="checkbox"/>	<input type="checkbox"/>

## Commissioner Comments

Powell

Abernathy

Copps

Martin

Adelstein

Marlene H Dortch  
Secretary